

DOCKET NO. 2019-290-WS

Application of Blue Granite Water Company for Approval to Adjust Rate Schedules and Increase Rates

CONDITIONAL PETITION FOR APPROVAL OF ACCOUNTING ORDER, AND REQUEST FOR EXPEDITED CONSIDERATION

This request for an accounting order does not involve a change to any of the Company's rates at this time or require any change in any Commission rule, regulation, or policy. In addition, the issuance of the requested accounting order will not prejudice the right of any party to address the recovery of these costs in a subsequent rate case proceeding. Accordingly, neither notice to the

public-at-large, nor a hearing is required regarding this petition.

The Company seeks expedited Commission consideration of this petition. The stay on the implementation of rates under bond—if continued beyond September 1, 2020—would prevent the Company from implementing rates that it has a right to implement under South Carolina law and would constitute a taking in violation of constitutional requirements. There are two possible remedies to avoid such a taking. The preferred remedy, which would result in the least customer confusion and future rate impact, is to lift the stay and permit the Company to implement the rates under bond for which the Company’s customers are on notice. An alternative remedy is to grant the instant deferral request and permit recovery of the foregone amounts, including carrying costs and necessary noticing costs, following the Company’s next general rate proceeding. Either remedy must be approved and implemented by September 1, 2020 to avoid an unconstitutional taking.

I. Background

On October 2, 2019, the Company filed its Application for Approval to Adjust Its Rate Schedules and Increase Rates (“Application”). The Commission conducted an evidentiary hearing on the Application from February 26, 2020 through March 2, 2020. On April 9, 2020, in Order No. 2020-306, the Commission ruled on the proposed rate relief. The Order was served on April 9, 2020, and on April 29, 2020, Blue Granite filed a Petition for Rehearing or Reconsideration with the Commission. On May 28, 2020, the Commission issued its decision on reconsideration, authorizing the implementation of an annual revenue requirement in the amount of \$29,191,874.

On June 8, 2020, the Company filed a motion for approval of a bond that would secure for customers the difference between the revenue requirement authorized by the Commission and that which the Company intended to implement under bond pursuant to S.C. Code Ann. § 58-5-240(D),

in addition to annual interest. On July 15, 2020, the Commission approved the Company's request for approval of the bond by a 6-0 vote. On August 7, 2020, for the Commission's convenience, the Company filed a proposed order memorializing the Commission's approval of the Company's bond request. Also on August 7, 2020, the Consumer Advocate filed a letter seeking clarification as to whether the Commission intended to issue a final order related to the bond and whether Blue Granite was permitted to implement rates under bond effective September 1, 2020. The Company filed a response to the Consumer Advocate on August 13, 2020, and filed its executed surety bond on August 17, 2020. On August 18, 2020, the Commission issued Order No. 2020-549, which directed the Clerk's office to schedule oral arguments on the issues raised by the Consumer Advocate and stayed the implementation of rates under bond "until further notice."

II. Relevant Legal Authorities

S.C. Code Ann. § 58-5-240(D) authorizes utilities to put rates into effect under bond, if the utility files with the Commission a petition for rehearing, until final disposition of the case. S.C. Code Ann. § 58-5-240(D) requires that the bond "be in a reasonable amount approved by the Commission, with sureties approved by the Commission." The Commission approved the Company's bond amount and surety by unanimous vote at its July 15, 2020 business meeting and the Company has a clear right to implement the rates under bond. However, in response to the Consumer Advocate's letter requesting clarification, the Commission suspended the implementation of the Company's rates under bond.

The Commission has repeatedly found that it is "without discretion to prohibit the utility from imposing its proposed rates under an appropriate bond," and that the statute grants utilities the authority to "impose its proposed rates under bond as a matter of right" Order No. 2008-269 at 3-4, Docket No. 2007-286-WS (Apr. 25, 2008); Order No. 2010-543 at 3-4, Docket No.

2009-479-WS (Aug. 12, 2010); Order No. 2016-156 at 4, Docket No. 2014-346-WS (Mar. 1, 2016). The U.S. Supreme Court explained the reasoning behind such provisions in the context of the Natural Gas Act:

It seems plain that Congress, in so drafting the statute, was not only expressing its conviction that the public interest requires the protection of consumers from excessive prices for natural gas, but was also manifesting its concern for the legitimate interest of natural gas companies in whose financial stability the gas-consuming public has a vital stake. Business reality demands that natural gas companies should not be precluded by law from increasing the prices of their product whenever that is the economically necessary means of keeping the intake and outgo of their revenues in proper balance; otherwise procurement of the vast sums necessary for the maintenance and expansion of their systems through equity and debt financing would become most difficult, if not impossible.

United Gas Pipeline Co. v. Memphis Light, Gas and Water Division, 358 U.S. 103, 113 (1958) (*United Gas Pipeline*). Likewise, in *Holt v. Yonce, Chairman of the S.C. Public Service Commission*, 370 F.Supp. 374 (D. S.C. 1973) (*Holt*), affirmed by the Supreme Court at 94 S.Ct. 1553 (1974), the Court was faced with a challenge to the statutory allowance of permitting utilities to put rates into effect under bond, in that case involving South Carolina Electric & Gas (“SCE&G”). The Court relied upon *United Gas Pipeline*, finding that, while rate increases may be difficult for certain customers, such increases “make possible expanded utility service to all who need it.” 370 F.Supp. 374, 379. The Court in that case rejected the plaintiffs’ challenge.

III. Costs the Company Conditionally Seeks to Defer

The costs the Company seeks to defer are (1) the difference between the Company’s Rates on Reconsideration and the rates it has planned to implement under bond, at a rate of \$5,970 per day, (2) the cost of providing additional notice to customers, and (3) carrying costs on these amounts until recovered from customers.

But for the Commission’s stay, the Company would implement rates under bond effective September 1, 2020 as has been planned by the Company and communicated to its customers. By

enjoining the Company from implementing the rate change, the Commission is requiring the Company to forego revenues to which it is statutorily entitled. As the Commission has repeatedly found, S.C. Code Ann. § 58-5-240 grants utilities the right to implement rates under bond during the pendency of the utility's rehearing and appeal. Denying the availability of this statutory right and denying the Company the ability to recover these additional revenues beginning September 1, 2020 would effect an unconstitutional taking. *See King v. S.C. State Highway Dept.*, 248 S.C. 64, 68 (1966) ("South Carolina has consistently taken the broadest possible view of what is a 'taking' and has construed the least actual 'damage' to be a taking. In the construction of Article I, Sec. 17 of the Constitution of 1895, no distinction is recognized between 'taking' and 'damaging', and the deprivation of the ordinary beneficial use and enjoyment of one's property is equivalent to the taking of it, and is as much a 'taking' as though the property were actually appropriated."); *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308 (1989) ("If the rate does not afford sufficient compensation, the State has taken the use of utility property without paying just compensation and so violated the Fifth and Fourteenth Amendments.").

There are two possible remedies to avoid an unconstitutional taking. The preferred remedy, which would result in the least customer confusion and future rate impact, is to lift the stay and permit the Company to implement the rates under bond for which the Company's customers are on notice. An alternative remedy is to grant the instant deferral request. Either remedy must be approved and implemented by September 1, 2020 to avoid an unconstitutional taking. With the Commission's stay of the Company's implementation of new rates, the Company would be required to forego additional revenues at a rate of \$5,970 per day.

The rates under bond are those for which customers are currently on notice—see the Company's June 8, 2020 filing in this proceeding—and implementing rates other than those for

which customers are on notice would lead to customer confusion. Further, deferring the amounts to which the Company is constitutionally and statutorily permitted—the rates under bond and associated carrying costs, which will accumulate over time—will lead to incremental rate impacts for customers once recovered at a future date. For these reasons, the preferred remedy would be for the Commission to affirm its previous approval of the bond and lift the stay, thereby permitting recovery of the Company's rates under bond.

To the extent additional notices become necessary for the Company's customers as related to the delayed implementation of the Company's new rates, the Company also seeks to defer the costs for such notices. For example, should the Commission grant the Company's deferral request, customers should receive notice that the rates under bond will not be implemented, and that the Rates on Reconsideration will instead be applied. As part of this deferral request, the Company also seeks to defer the carrying costs associated with the deferred amounts at the Company's weighted average cost of capital. Carrying costs on the deferral balance are an actual cost incurred by the utility, which requires cash. Further, the Company's significant accommodations for its customers during the COVID-19 pandemic have been at substantial cost to the Company.

IV. Conclusion

WHEREFORE, the Company conditionally requests that the Commission issue an accounting order authorizing the Company to defer in a regulatory asset (1) the difference between the Company's Rates on Reconsideration and the rates it has planned to implement under bond, at a rate of \$5,970 per day, (2) the cost of providing additional notice to customers, and (3) carrying costs on these amounts until recovered from customers. An accounting order will enable the Company to have continued access to necessary capital during these uncertain and rapidly changing economic times, and the granting of an accounting order will not preclude the

Commission or parties from addressing the recovery of these costs in a future rate case proceeding.

Respectfully submitted this 24th day of August, 2020.

s/Samuel J. Wellborn

Frank R. Ellerbe, III (SC Bar No. 1866)
Samuel J. Wellborn (SC Bar No. 101979)
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, SC 29211
(803) 929-1400
fellerbe@robinsongray.com
swellborn@robinsongray.com

Attorneys for Blue Granite Water Company

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
Docket No. 2019-290-WS

IN RE:)	
Application of Blue Granite Water)	CERTIFICATE OF SERVICE
Company for Approval to Adjust Rate)	
Schedules and Increase Rates)	
_____)	

This is to certify that I, Toni C. Hawkins, a paralegal with the law firm of Robinson Gray Stepp & Laffitte, LLC have this day served a copy of the **Conditional Petition for Approval of Accounting Order, and Request for Expedited Consideration** in the referenced matter to the parties listed below by electronic mail:

Andrew M. Bateman, Counsel
Alexander W. Knowles, Counsel
Christopher M. Huber, Counsel
S. C. Office of Regulatory Staff
abateman@ors.sc.gov
aknowles@ors.sc.gov
chuber@ors.sc.gov

Michael Kendree, County Attorney
York County, South Carolina
Michael.kendree@yorkcountygov.com

Richard L. Whitt, Counsel
Whitt Law Firm, LLC
richard@rlwhitt.law

Carri Grube Lybarker, Counsel
SC Department of Consumer Affairs
clybarker@scconsumer.gov

Roger P. Hall, Counsel
SC Department of Consumer Affairs
rhall@scconsumer.gov

James S. Knowlton, Pro Se
jim.knowlton@sim.org

S. Jahue Moore, Counsel
Moore Taylor Law Firm, PA
jake@mttlaw.com

Laura P. Valtorta, Counsel
Valtorta Law Office
laurapv@aol.com

Stefan Dover, Pro Se
stefandover@yahoo.com

John J. Pringle, Jr., Counsel
Adams and Reese, LLP
jack.pringle@arlaw.com

Dated at Columbia, South Carolina, this 24th day of August, 2020.


